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ABSTRACT

It is suggested that the right to educational choice and the absence of majority control of the content of schooling are both essential to preserving pluralism in American education; however, public schools rarely encourage meaningful diversity. Further, there is an absence of educational choice for most American families due to the fact that American school finance systems must tax and spend in a way that discriminates against the non-rich in matters of school choice. A blueprint for redesigning the structure of public education is needed to end the majority control of school policy, especially content, and to reclaim educational liberty as an instrument of diversity and individual liberty rather than as a tool of economic discrimination and racism. A foundational redesign would require a separation of school and state, with the following delineations: (1) establishment of free choice in education, making it possible for every family to secure education of their child in any school in the state meeting the education requirements; (2) limitation of government school requirements to two categories--those that do not substantially affect the content of education, such as days per year, health and safety, attendence reporting, etc. and content requirements which can be justified as being of fundamental importance to society, i.e., guaranteeing equal access to education regardless of race, requiring reading and writing achievement or knowledge of the principles of constitutional government; and (3) provision of a clear and enforceable policy that racial discrimination in schooling is illegal. (DCS)

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Pluralism, Equal Liberty, and Public Education

Stephen Arons

Pluralism in American education is a tenet more honored in the breach than in the observance. As a nation, our ideals, our constitution, our history, and the self-protective instincts of our subcultures all proclaim the importance of pluralism. Yet our public school systems rarely observe or encourage meaningful diversity. No doubt teachers and other school personnel, confronted with a pluralistic clientele, want to preserve and respect that diversity; but they are prevented from doing so by the financial and political structure of schooling.

It is difficult—even painful—to admit the possibility of a flaw in the foundation of public education; but it is there. The right of educational choice, and the absence of majority control of the content of schooling, are both essential to preserving pluralism. Yet neither is to be found built into the structure of schooling. We have reformed and repaired our schools in periodic bursts of legislative, judicial, and political energy; but the fundamental assumption through all these efforts has remained that the majority may justifiably use schools to impose its version of the good life upon a captive audience which includes large numbers of dissenters.[1]

In 1925 the principles of pluralism and educational liberty were applied directly to the structure of schooling. In that year the Supreme Court handed down *Pierce v. Society of Sisters*[2] in which the justices insisted that "the child is not the mere creature of the state," and ruled that no state may deny any family access to an alternative to government run schools. The decision that the fundamental principles of liberty insure a right to school choice was an act of pluralism at a time of extreme right-wing jingosim in American history.[3] The Court saw that schooling concerned socialization and the development of the individual mind, and refused to make this influence the sole possession of the political majority. But beyond this it left the balance of power between family and state unresolved.[4]

Nearly sixty years later the *Pierce* doctrine retains its vitality in Supreme Court opinions as well as in public debate over school policy. Virtually no legislator, litigant, or educator contends that non-government schools should be eliminated or that the government should regulate them so heavily as to make them identical to public schools. Although the importance of freedom of choice has been trumpeted, the reality is that it does not exist. Since 1925, economics has made the right of school choice the property of the rich, while politics has transformed freedom of choice from an instrument of pluralism to a tool of school segregation.[5] The design flaw in schooling which *Pierce* sought to correct has become even more entrenched by virtue of economic and political developments. The lesson of the 60 years since *Pierce* is that the liberty which sustains pluralism cannot be reclaimed without ending economic inequality in school choice.

Education, Pluralism, and Cultural Consensus

Schooling is two-edged. It is a process of opening minds, liberating the thought process, creating a marketplace of ideas and beliefs in which individuals' minds move unencumbered by government and political majorities. Schooling-as-liberation, as this might be called, fosters critical

thinking and the possibility of transcending the status quo which sometimes routinizes the life of the intellect and the spirit. But schooling is also a process of transmitting particular values, worldviews and beliefs to the rising generation. Indeed, schooling as socialization aims to transmit an entire set of cultural assumptions from one generation to the next, thereby legitimizing and inculcating the beliefs of adults in the minds of children. This manipulation of ideology and consciousness has often been the means by which competing social or political groups attempt to replicate their own visions and meanings through education. These two aspects of schooling—the liberating and the socializing—are two faces of a single process, the process of communication. The two functions are in tension. No school socializing is ever efficient and relentless enough to make students into mere culture clones; and no liberating schooling can avoid transmitting a large number of beliefs and assumptions along with its small portion of transcendence or skepticism.

What the two parts of schooling have in common is the fact that neither is ever value-neutral or value-free. What is being taught, tested, contested, transmitted, and influenced in school is, at bottom, meaning. Even facts rest ultimately upon beliefs, assumptions, and worldviews for their legitimacy. Stretched thin across a pluralistic society, value-laden schooling cannot avoid the contest over meanings, and cannot help but be pulled, tugged, and sometimes torn asunder by the competing desires of subcultures, families and individuals to see themselves reflected in the nation's primary child-rearing institution. When schooling is majority-controlled in content as well as form, these struggles over conscience are exaggerated and pluralism is put at risk of being swept away by orthodoxy. The history of value conflicts in American schooling reveals that the majoritarian structure of the school system makes the preservation of pluralism difficult and sometimes impossible.[6]

The effort to preserve pluralism in compulsory, universal, publicly funded schooling has been slow as well as difficult. By the close of the nineteenth century an increasing

number of cases were being litigated in which the liberty provisions of the Bill of Rights were being invoked by teachers, families, private schools, and religious communities seeking refuge from orthodoxy in pluralism.[7] The nature of these conflicts reveals that from the late 19th century on, the society was making vigorous use of the schools to define and maintain social cohesion, and that individuals and groups seeking freedom from the dominant ethic faced an uphill struggle. As the 20th century wore on and the battles over socialization in schools continued, the courts and the public continued to have trouble applying the idea of freedom of intellect and spirit to a compulsory and majority-controlled school system. A fundamental confusion began to creep into the legal ideology of schooling. At the very times in which the Court was upholding the rights of teachers, students, or families to be free of the "pall of orthodoxy," the idea emerged in judicial opinions that the legitimate purpose of schooling is to "establish and apply their curriculum in such a way as to transmit community values." The Court stated in one case that "there is a legitimate and substantial community interest in promoting respect for authority and traditional values be they social, moral, or political."[8]

In cases brought in defense of civil and religious liberty, certain infringements of individual rights were curbed by the courts, but the common assumption came to be that the prevailing political majority (or whatever passed for it in running the local schools) could use the schools to impose its values on everyone in spite of the resistance of dissenting families, groups or individuals.[9] Majority control has thereby been legitimized without even asking the question of whether freedom of intellect and spirit and the pluralism which depends on it are inconsistent with majority control of school content. As the public and judicial commitment to majority control becomes more entrenched, it proves still more difficult to secure liberty and provide for the defense of pluralism. Everyone admires the emperor's new clothes, while reality recedes from view under the pressure of legal fictions and ideological assumptions.

This attempt to inject liberty into schooling has been important, but it has remained peripheral because the core issue was ignored. In the abstract sense the victim was pluralism—the diversity of traditions and worldviews among groups and individuals in a single culture. In a concrete sense the victims were blacks and other racial minorities; Catholics; Amish, Christian fundamentalists, and other religious minorities; language and culture minorities; political and cultural dissenters of all stripes; and those who could neither buy their way out of the public school struggle over orthodoxy, nor gain the power and resources necessary to bargain within the school system.

No more violent and destructive example of the repression of pluralism through schooling exists in American history than the systematic stigmatization and denial of liberty and resources imposed upon black Americans by majority culture.[10] But the nature of the majoritarian process in education has meant that at one time or another almost every cognizable group has had substantial reason to complain about their treatment. Of course many "victims" received compensation. People got educated after a fashion, even if their potentials were almost never realized. School socialization was a valuable and a desired part of assimilation for some. Enough liberation took place to sustain at least a lottery player's attitude toward the school system. And the society had a mechanism for class, economic, and racial sorting[11] and for defining and putting in place a legitimizing social cohesion in a sometimes frightening pluralistic culture.

The Anti-Value Consensus

After all these struggles over pluralism, the Supreme Court recently disclosed in the *Pico*[12] case the sacred duty of the majority to recreate itself through schooling. But the consensus which the Court thereby believes to be more important than pluralism has lost any character it might have had. It has become bland, homogenized, and assertively mediocre. The orthodoxy which prevails in public schools today is not secular humanism or socialism, not

capitalism, Protestantism or militarism, but a characterless bureaucratic order bent on denying values, and overly tolerant of emptiness. Driven perhaps by a fear of value conflict, the schools have created a confused and confusing consensus which teaches the intellectually and spiritually debilitating message that there are neither values nor meanings, neither faith nor critical thinking, worthy of human commitment. The great task of the student today is to learn the institutional rules well enough either to win by playing by them, or to survive by taking advantage of them. Set against the formidable array of rewards and punishments of the bureaucratized school, the pursuit of meaning, of useful knowledge, of excitement, curiosity, unknown facts and unanswerable questions all become second-class citizens taking a back seat to a managerial mentality.

If the American public school ever was a melting pot, the consensus being cooked up there now is a thin gruel indeed. Because the absence of choice means schools cannot afford to offend anyone by school content, we have pursued a value-neutral education which does not exist. In the process we have rendered schooling and learning boring to the creative and inquiring mind, insulting to the cultural and spiritual heritages of a pluralist culture, superficial, mindless, alienating and anti-intellectual in the extreme. These results do not arise from the intentions of teachers, students, or public officials, but are produced by a school structure which penalizes choice and commitment to values while rewarding intellectual passivity and ethical numbness. The cost of ignoring the contradiction between majority control and freedom of intellect and spirit in the schools has been the creation of a sea of empty platitudes which threatens to engulf both pluralism and individuality.

Many people inside and outside the public schools are angry about this waste of human minds and spirits. Left and right, religious and secular, eurocentric and third-world, male and female, they respond with proposals, demands, reforms which seek to inject quality, meaning and engagement into the process. But they soon discover from their own experience, if not from the history of compulsory schooling, that one vision of good education cannot be

established in a majority controlled school system without destroying another, and that the pursuit of mediocrity excludes all visions. Where compromise between competing worldviews is unavailable or too homogenized to have any recognizable character, the casualty is pluralism. It is not surprising, therefore, that among those who wish to rescue schooling from a mindless, anti-value morass, there has been a proliferation of conflicts over school curricula and texts as well as over the regulation of private schooling and home instruction.[13] Neither is it surprising, considering majority control of schools and inequality of choice, that most are disappointed by the results of the struggle and either succumb to apathy or continue with yet another disappointing round of efforts to create "The One Best System."[14]

School reform is a kind of American cultural neurosis which threatens pluralism. Again and again we repeat the cycle of reform and disappointment, never asking whether a pluralism of reforms might be truer to the nature of education than the pursuit of the one best system, never inquiring whether respect for family choice might create more satisfaction and quality than compulsory unification of opinion and never supposing that unnecessary conflict might be reduced if government at all levels would get out of the business of prescribing the answers to questions of conscience and human development in schools.

Meaningful Consensus and Core Values

Neither the repressiveness of imposing values through schooling nor the frequently mindless character of what is imposed there means that there is no place for consensus in education or that there are no basic values which can justifiably be imposed through schooling. If education policy makers take seriously the importance of social cohesion and the freedom of belief, two questions must be answered: Under what conditions is a meaningful and genuine social consensus likely to be achieved? And, by what standard shall we determine which values we may legitimately attempt to establish in schools?

The answer to the first question is clear to any negotiator,

mediator, or citizen familiar with the operation of democratic decision-making. Agreements which are voluntarily entered into by parties of roughly equal bargaining power are much more likely to address real issues and express a true meeting of the minds than agreements which are in effect coerced. The consensus which is reached when some parties are under duress or have no real choice is a false consensus, likely to breed resentment and continuing conflict, and to fall apart. The common term for such a consensus is "tyranny." The only means to enforce such a consensus is through repression. Whatever pluralism survives this process goes underground.

If we wish to use the American system of schooling to help fashion the social cohesiveness necessary to keep a pluralistic society from becoming fragmented and chaotic, then voluntarism is central. If we wish to use the schools to define and reinforce a sense of community which is essential to social and psychological well-being, then we must insure that this voluntarism is backed by an equal opportunity for every family to subscribe to a different consensus or another community. Under the present structure of schooling in America a majority of families constitute a captive audience in the process of school consensus making. Voluntarism is watered down to the right to vote in a school board election. Were this a process for dealing with matters of behavior among adults, this system would be acceptable; but here the subject is attitudes, beliefs, values, and the development of conscience among children.

The voluntarism and choice essential to educational liberty are more likely to encourage genuine consensus than are compulsion and the absence of choice. It is a tragic irony that those most concerned with the collapse of cultural consensus are often the most strongly opposed to educational liberty. Nowhere has this point been so forcefully made as in the Supreme Court's decision in *Barnette v. West Virginia*, in which the compulsory flag salute in American schools was found unconstitutional at the height of the Second World War.

> As governmental pressure toward unity becomes greater, so strife becomes more bitter as to whose unity it shall be. Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing. The ultimate futility of such attempts to compel coherence is the lesson of every such effort. . . .[15]

The second question suggests that there are values which are so basic to the American political and cultural heritage and to the survival of the nation that they can justifiably be required content for schooling. One of the historical problems of American school policy has been the tendency to go beyond this crucial core of values and use the schools to try to perfect individual character, cure social ills, and advance every intellectual, pragmatic, or reformist fad imaginable. Not only will the public schools eventually collapse under the weight of these social expectations, but the conflict which results from reducing family power and individual conscience to a near nullity makes it all the more difficult to identify those values which really are basic.

School policy debates often assume that the majority decision will occupy the field—determining what courses and content shall be required of all children, specifying what textbooks shall be used and what their content shall be,[16] establishing standardized tests which must be passed, and putting in place a hidden curriculum which teaches more than all the rest. The result is that the real core values of our culture remain unknown, slighted, or are resisted as an indistinguishable part of the excessive government regulation of educational liberty. It is counter-productive to require so much when we really need require so little.

This phenomenon is easily observable in the struggle to eliminate racism in schooling. The effort to curb legislative, judicial, and bureaucratic regulation of schooling sometimes spills over into resistance to school desegregation, so that some who oppose racial equality in schooling can camouflage their policies and intentions as opposition to

the bureaucratization of education. Likewise those who oppose bureaucratization but support racial equality may find themselves unwittingly supporting political action which has racist effects. To preserve the commitment to racial equality without sacrificing educational liberty, and to struggle for freedom of choice in schooling without achieving this freedom at the expense of racial minorities, it is necessary to distinguish what the government must require in schooling from the vast area of educational decisions which ought to be left to the family in consultation with the teacher.

Some of the core values are to be found in the core document of the society, the Constitution. Foremost among these are our national commitments to individual liberty, especially privacy and freedom of belief and expression and the prohibition of racial discrimination in any form and for any reason. Further, the political order which the Constitution protects could not survive long with an uneducated public, and so it may be that the ability to read, write, calculate and understand the principles of constitutional democracy could also be among justifiable requirements for all schools. There is room for debate about what if any items could be added to the list of content requirements. The important point here, however, is that this debate needs to be undertaken with the clear understanding that it is only those few things which are demonstrably central to the nation's nature and survival which would be required. In all other matters the decisions of families and teachers should be independent of government control.

This formulation is based on the doctrine of constitutional law which holds that fundamental constitutional rights may be infringed upon by government only where it is possible to show that the state has a compelling justification for so doing.[17] Since educational liberty—both freedom from majority control of school content and the equal availability of school choice—is of constitutional magnitude, it is fitting that the standard of compelling justification be used for determining core requirements in schools. Such a standard has effectively protected both pluralism

and legitimate government interests in the areas of religious freedom and freedom of expression; and there is every reason to believe that it would be as effective in striking a better balance between educational liberty and consensus in schooling than now exists.

Pluralism and the Separation of School and State

Pluralism is a much praised characteristic of American life. One way or the other each of us owes his or her presence, survival, and vitality in America to pluralism. Yet because of two structural flaws in its design the American system of education undercuts pluralism and strikes at the core of the individual liberty which sustains pluralism. Those families with strong commitments and beliefs about their own heritage, their own idiosyncratic values, and the education of their children, are discouraged by this structure from realizing their beliefs unless they are wealthy. Those who support the consensus fashioned by public schooling often find that they have subscribed to the pursuit of a lifeless mediocrity which soon drains the excitement and meaning of education. Those who neither accept this bland consensus nor can go elsewhere find themselves either the victims of majority impositions or involved in a zero-sum game of establishing one set of values at the expense of another.

The two structural flaws are basic. First, the majority control of school policy, especially content, has meant that schooling is used by those in power to establish their ideologies and worldviews or to stigmatize the values of those out of power. The fact that what is established is often a confused amalgam does not make it any less an infringement upon the consciences of dissenting families. Second, the absence of school choice for most American families has disempowered them within the public system and made it virtually impossible for them to choose to follow their consciences in matters of educating their children. The fact that American school finance systems must tax and spend in a way that discriminates against the non-rich in matters of choice increases the threat posed by majoritar-

ianism in schooling.[18] Pluralism cannot survive these restrictions without serious distortion.

To remedy these structural problems requires a separation of school and state which would make freedom of intellect and belief consistent with universal, compulsory, publicly supported education. Efforts to preserve and protect pluralism in schools without such a separation of school and state have provided minor gains, but have been unsuccessful in getting at the root of the problem.

The proposal for a separation of school and state, in which the public would pay equally for every child's education without specifying the content or setting of that education beyond a few compelling requirements, is parallel in its justification, though not its form, to the separation of church and state which has protected religious freedom for two hundred years. With a separation of school and state no ideology, opinion, or worldview would be established by being adopted as government policy in schooling; and freedom of choice in education would be equally available to all families, regardless of income, in schools which met minimum standards based upon constitutional requirements such as non-discrimination. The analogy between schooling and religion is imperfect, but powerful. Schooling may be compulsory and publicly funded whereas religious observance may not. But at bottom each enterprise deals with values, meanings, conscience, and belief, all of which are basic to the development and consciousness of individuals, groups and subcultures. In fact, it may be argued that the manipulation and development of consciousness which take place in 35 hours of schooling each week are of far greater influence on the modern child than is religious training and practice. As Ivan Illich put it, "The school is becoming the established Church of secular times."[19]

Illich's statement provides a sharp focus for the issue of freedom of conscience and schooling, calling to mind all the dangers for individuals, for pluralism, and for the system of freedom of belief and expression which are raised by majoritarian and economically discriminatory control of schooling.

By the last quarter of the eighteenth century, the political experiences of European and American societies had indicated the importance of a complete separation of church and state. Unless religion and government were confined to separate realms, the political process would be hopelessly factionalized by irreconcilable conflict over spiritual matters, and the freedom of religion of individual citizens would be destroyed by the attempt to substitute religious orthodoxy for legitimate political consensus.

By the last quarter of the twentieth century, nearly two hundred years after the adoption of this principle of separation in the U. S. Constitution, experience again indicates the cost of building into government a continuing conflict between individual conscience and state-supported orthodoxy. Without a separation of school and state, the governing process of American schooling has been increasingly undermined by value conflict over school content, individual freedom of belief and expression has been hobbled, and pluralism has been undermined. In the last 100 years schooling has become a major means of transmitting culture. When government imposes the content of schooling and discriminates in the availability of school choice, it becomes the same deadening agent of repression from which the framers of the Constitution sought to free themselves.

The proposal for a separation of school and state, though based upon traditional American values of pluralism, individual liberty, and family responsibility, is controversial. Though very few opponents of a separation between religion and government can be found in the U.S., there are many who regard similar protection for secular pluralism and freedom of conscience in schools as unacceptable. To some, the proposal is unacceptable because it appears to threaten vested interests like teachers' working conditions, pay, and academic freedom, or the professional influence and status of school administrators, schools of education, and unions. Others see the revitalization of educational liberty as an invitation to reverse the modest progress the nation has made toward school desegregation in the past three decades. The economic disadvantages of the poor

and working class in a market economy have also been cited to show that increased availability of school choice might simply move those with few resources out of the frying pan and into the fire. From this point of view the net result for most families if educational liberty were equalized would be a loss of power even compared to their weak position under majoritarianism. The balkanization of society—a kind of extreme and coercively distorted version of pluralism in which society becomes a system of religious, socioeconomic, and ethnic school ghettos—is also feared.

One of the most frequent reactions against a separation of school and state has already been discussed, the fear that the pluralist society which encourages school choice risks losing its only meaningful process for arriving at social consensus. Related, but at the other end of the social spectrum, is the fear that getting the majority out of the business of prescribing the content of schooling will change the relationship between parents and children for the worse. Either children will claim their own liberty rights against their parents and thereby involve the law in prescribing family relations, or the absence of a powerful government influence in schools will leave children at the mercy of insensitive or intolerant parents who will deny their children the liberating experience of a mind-opening education. Finally, some simply fear freedom, the unknown, change. To them even the security which is provided by a deeply flawed system is preferable to coping with the mere possibility of improving their situation.

These criticisms,[20] which come from all parts of the political, religious, economic, and cultural spectrum, are serious; and they deserve serious thought by anyone who would either suggest or resist basic reforms in American education. But what these criticisms reveal, more than possible problems with a separation of school and state, is how much is at stake in the design and redesign of the American public school system. Schooling is an intimate form of communication between the individual and his or her culture; and any forthright discussion of how this communication ought to take place naturally raises the

most basic and sensitive issues about the development of the individual mind, the vitality of a pluralist tradition and the entire range of social and political relations.

The seriousness of the criticisms must be admitted; but a precondition to engaging in a thoughtful exploration of their merit must be established. The real possibility that the present structure of schooling may be undercutting the pluralism and individual liberty it is meant to defend must be acknowledged. To deal with these criticisms in the absence of a recognition that a problem of educational liberty exists is to engage in a diversionary debate of no real consequence and to obscure the very situation which gives rise to the proposal for a separation of school and state.

There have been dozens of proposals, plans, legislative efforts, and academic studies advanced in the name of educational liberty.[21] Each advances different social and political interests under the banner of school choice. The existence of so many varied reform plans and the failure to adopt any of them indicate that while a practical technical design for a separation of school and state can be produced, the public and legislative awareness that the problem of educational liberty is basic to the quality of American schooling must first be increased. To put the matter more simply, awareness of the problem is lagging behind the production of solutions. Until this is remedied, the cycle of reform and disappointment is not likely to be broken.

Blueprint for Education: Redesigning the Foundation

The separation of school and state would be an educational reform of substantially greater durability and significance than many of the specific reforms which have been advocated by private and governmental commissions over the past year. First, an equitable and libertarian redesign of the foundation of American schooling—the provision of free choice and the elimination of excessive government control of school content—goes to the core of the problem of education quality. There are so many differing definitions of what constitutes good education and what purposes good education ought to serve, that majority deci-

sions about quality inevitably exclude a good many legitimate options and cause mismatches between students and appropriate education. As long as our school structure requires that we define a single pervasive answer to the question of quality, quality in a pluralistic society will remain unattainable.

Second, increasing the level of educational liberty makes families rather than government the primary reformers of education. When those who hold the balance of power in educational decision-making are also those who have the greatest knowledge, concern, and responsibility for the child, satisfaction is increased, conflict is made more manageable, and expertise takes its proper place as advice and service rather than control. The merit as well as the appeal of many of the reform proposals currently being discussed nationally would be greatly enhanced if those proposals were offered for family choice rather than as programmatic impositions by state and local education agencies. The nationally expressed concern for getting the government off the backs of the people in matters of education would be better directed at the local school board and state requirements than at the federal government. The few requirements to which families must adapt, and which are the legitimate business of state or federal government, concern the elimination of school segregation, the guarantee of liberty, and those content requirements which can be shown to be essential and compelling state interests.

It is not possible to evaluate here all the proposals for tuition tax credits, for education vouchers, or for the decentralization of power to families and teachers which have been put forward over the past twenty years. The bibliography at the close of this chapter will have to suffice for that task. What is possible, and necessary, for a clear recognition of the importance of educational liberty, is to state three principles essential to the separation of school and state here proposed:

1) Abolish the present lack of freedom in school choice, so as to make it possible for every family to secure the education of their children in any school in the state

meeting the education requirements. This principle would prevent the wealthy from being the only ones able to exercise the constitutional right to school choice, and would assure that children whose parents are at the bottom of the economic ladder are not priced out of the market of quality schooling by the accident of their parents' economic status.

2) Limit government requirements of schooling (whether public, independent or home schooling) to two categories: a) requirements which do not substantially affect the content of education, such as days per year, health and safety, attendance reporting, etc.; and b) content requirements which can be justified as being of fundamental and compelling importance to the society, such as guaranteeing equal access to education regardless of race, and requiring reading and writing achievement or knowledge of the principles of constitutional government. This would mean the repeal on state and local levels of most controls on curriculum and texts and the empowerment of individual families and teachers.

3) Provide a clear and enforceable policy that racial discrimination in schooling is illegal. This would mean that no school found to discriminate on the basis of race in any aspect of its operation would be regarded as satisfying the compulsory attendance laws. Discrimination, of course, should be carefully defined to prevent discrimination by any race against any other race.

Among all the concrete proposals which have been made for the creation of equal liberty in schooling, two bear special examination on the basis of the three principles stated above for achieving a separation of school and state. The work of John Coons and Stephen Sugarman of Berkeley Law School over the past decade perhaps comes closest to a complete and pragmatic design for a separation of school and state. The most detailed presentation of the proposal and the arguments for and against it are contained in their book, *Education by Choice: The Case for Family Control.* The second proposal is a bill entitled "Minnesota Educational Quality and Equity Act of 1983," introduced as

Minnesota House Bill 1072 by Assistant Majority Leader John E. Brandl, March 30, 1983. Each of these is a voucher proposal, though there is no reason that a state tuition tax credit plan could not be designed to meet the same policy objectives and legal requirements.

A blueprint for re-designing the structure of American public education is needed to end the tyranny of the majority in schooling and to reclaim educational liberty as an instrument of diversity and individual liberty rather than as a tool of economic discrimination and racism. Proposals which could achieve these goals would not call for the abolition of public support of schools or for an end to compulsory, universal, and equally accessible education. Instead they would require restructuring the foundation of the school system based upon principles which express the traditional American commitment to pluralism, freedom of intellect and spirit, and equality of opportunity.

Notes

1. Only about 10% of American students attend non-public schools. But a *New York Times* poll of February, 1983 revealed that 37% of American families with incomes under $10,000 would utilize private schools if money were not a factor. An N.I.E. study in 1983 apparently found that a similar desire for alternatives to public schooling occurred most frequently among minority race families. See "Shift to Private Schools Predicted with Tax Credit," *Education Week*, July 27, 1983. See also "Parents and School Choice: A Household Survey," U.S.D.O.E., December, 1983.

2. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

3. Oregon had responded to a KKK call for the "Americanization" of "foreigners" by requiring that every child attend public school only. For a review of the legal theories by which *Pierce* has been explained see S. Arons "Separation of School & State: *Pierce* Reconsidered" 46 H. Ed. Rev. 56 (1976) especially at note 9.

4. The *Pierce* decision acknowledged, in dictum, the power of the state to make "reasonable" regulations of non-government schools, but did not specify how far these regulations might proceed in making the private alternative look like the public school. Two years later the Court invalidated regulations which were so pervasive that they made the private school identical to the public, see *Ferrington v. Tokushige*, 273 U.S. 284 (1927).

5. The Supreme Court's evaluation of freedom of choice plans appears in *Green v. New Kent*, 391 U.S. 430 (1968).

6. Any good history of education reveals the degree to which public school reform has been the vehicle for political and cultural competition among adults. See especially Tyack, *The One Best System* (1974), Nasaw, *Schooled To Order* (1980) and M. Katz, *The Irony of Early School Reform.*

7. For a comprehensive review of these cases, see Dorsen, et. al. *Political and Civil Rights in the United States*, vol. 1, 4th edition.

8. *Pico v. Island Trees*, 457 U.S. 853, 864 (1982); 102 S. Ct. 2799 (1982) at 2806.

9. In *Tinker v. Des Moines*, 393 U.S. 503 (1968), for example, the Court protected the rights of students to engage in non-disruptive, symbolic protest of the Vietnam War by wearing black armbands to school. But it granted the school board the power to define the exact nature of order, and therefore disruption in school. The result was to narrow the student right of freedom of expression substantially by suggesting a different technique for control by the schools.

10. The best overview of the cultural effect and legal involvement in creating and remedying school segregation is "The Quest for Effective Public Schools" in D. Bell, *Race, Racism, and American Law* 2nd edition (1980).

11. See D. Kirp, "Schools as Sorters," University of Pennsylvania Law Review 121 (1973).

12. See note 8 *supra.*

13. See Arons, *Compelling Belief: The Culture of American Schooling*, (1983).

14. The term is David Tyack's, *The One Best System* (Cambridge, Mass: Harvard University Press, 1974).

15. *Barnette v. West Virginia*, 319 U.S. 624, 641 (1943).

16. Twenty-two states currently have state-wide legislatively mandated procedures for specifying which textbooks (with what content) may be used by individual teachers and local schools in the state. The political majority on a state-wide basis is therefore specifying the definition of truth which may be taught and tested in public schools.

17. See for example *Yoder v. Wisconsin*, 406 U.S. 205 (1972) in which the state of Wisconsin failed to come up with a compelling justification for requiring Amish teenagers to attend school above the eighth grade. Amish families successfully asserted their First Amendment religious rights against the compulsory attendance law.

18. The discrimination arises from the fact that while all families must pay taxes to support schooling, only the wealth of the few enables them to pay again for the tuition of an alternative to majority controlled education. This is not simply a matter of designing financial mechanisms to create economic discrimination. It conditions the exercise of a fundamental liberty—school choice—on economic status. See Arons, note 3 *supra* at pp. 101 103.

19. Ivan Illich, "Commencement at the University of Puerto Rico," *New York Review of Books*, 9 October 1969, p. 12.

20. The criticisms are collected from reactions to the idea of separation of school and state contained in the *Harvard Educational Review*, note 3 *supra*; *Compelling Belief*, note 13 *supra*. See for example the essay-reviews, "The Tantalizing Case for Liberty" by T. James in *Harvard Educational Review*, Spring 1984; "Education for Self Government: Reassessing the Role of the Public School in a Democracy" by C. Lawrence, *Michigan Law Review*, Spring 1984; and "Freedom of Thought and Majority Rule in the Public School: The Bankruptcy of Liberal Ideology?" by D. Tyack, *Columbia Teachers College Record*, Spring, 1984.

21. These include freedom of choice desegregation plans invalidated in *Green*, note 5 *supra*; aid to private schools invalidated in *Lemon v. Kurtzman*, 403 U.S. 602 (1973); tuition credits for private school invalidated in *Comm. for Public Education v. Nyquist*, 413 U.S. 756 (1973); tuition tax deductions for private and public schools approved in *Mueller v. Allen*, 51 USLW 5050; and a host of voucher plans, tax credit proposals and others which are laid out in detail in some of the books in the bibliography.

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